

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DENNIS BONILLA-GUZMAN,

Defendant.

No. CR03-093L

ORDER ON RE-SENTENCING

This matter comes before the Court on a limited remand of the Ninth Circuit Court of Appeals pursuant to United States v. Ameline, 409 F.3d 1073 (9th Cir. 2005) (en banc). United States v. Bonilla-Guzman, 148 Fed.App'x 649 (9th Cir. 2005). In accordance with the limited remand procedures adopted in United States v. Ameline, each party was invited to file a supplemental memorandum (Dkt. # 51). The Court has received and reviewed memoranda from the government (Dkt. # 54) and defendant (Dkt. # 53).

In the supplemental pleadings, the parties were asked to advance sentencing arguments that were previously barred or deemed "not ordinarily relevant" under the pre-Booker guideline analysis. See United States v. Booker, 543 U.S. 220 (2005). Counsel were reminded that the question at this point is not whether the defendant *should have* received a different sentence. Rather, the question is whether under an advisory guidelines

1 regime, the defendant *would have* received a different sentence, and whether that difference  
2 would have been *material*.

3 Dennis Bonilla-Guzman pleaded guilty to Conspiracy to Distribute Cocaine in  
4 violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(B) and 846. Section 841(b)(1)(B) carries a  
5 sentence of not less than five years (60 months) imprisonment. Pursuant to the sentencing  
6 guidelines, Bonilla-Guzman's sentencing range was from 70 to 87 months, based on a base  
7 offense level of 27 and zero criminal history points. Bonilla-Guzman sought, but did not  
8 receive, a further reduction pursuant to the safety-valve provision. U.S.S.G. § 5C1.2. The  
9 government determined, in conjunction with Canadian authorities who were also  
10 investigating the defendant, that the information that Bonilla-Guzman provided to the  
11 government in his proffer interview was "less than candid." Government Sentencing  
12 Memorandum at 2 (Dkt. # 34). This Court sentenced Bonilla-Guzman to the bottom of the  
13 guidelines range. Upon issuing this sentence, the Court said: "It's true that the Defendant  
14 has entered a plea of guilty and he attempted to cooperate, and in recognition of that I will  
15 impose the bottom of the range of 70 months, but I can't do more than that."

16 In his re-sentencing memorandum, Bonilla-Guzman seizes on this statement as  
17 evidence that the Court felt constrained by the mandatory sentencing guidelines, and that the  
18 Court would have issued a materially different sentence under the current advisory regime.  
19 Bonilla-Guzman also argues that a number of factors that could not be considered prior to  
20 Booker must now be evaluated by the Court, including Bonilla-Guzman's age, familial  
21 responsibility and socio-economic status. These factors are considered "not relevant" under  
22 the guidelines, but might affect the Court's consideration of the statutory sentencing factors.  
23 See 18 U.S.C. § 3553(a).

24 Contrary to defendant's arguments, the Court's language acknowledging sentencing  
25 limitations referred not to the mandatory restrictions of the Guidelines, but rather to the  
26 limitations that Bonilla-Guzman had put on himself by refusing to truthfully provide

1 information in order to receive the safety-valve reduction. The safety-valve mechanism at  
2 sentencing gave the Court an opportunity to lower the defendant's sentence in recognition of  
3 his cooperation. Bonilla-Guzman failed to do so. None of the other factors identified in  
4 Bonilla-Guzman's re-sentencing memorandum persuades the Court that Bonilla-Guzman  
5 would have received a different sentence under the advisory guidelines regime.

6 The Court has considered the arguments and concludes that under an advisory  
7 guidelines regime, Bonilla-Guzman's sentence would not have been materially different. For  
8 this reason, IT IS HEREBY ORDERED that Bonilla-Guzman's request for resentencing is  
9 DENIED.

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11 DATED this 1st day of March, 2006.

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14 Robert S. Lasnik  
15 United States District Judge  
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